

APPELLATE CRIMINAL.

Before Mr. Justice Kernan and Mr. Justice Wilkinson.

QUEEN-EMPRESS

against

SIVARAMA.*

1888.
August 1.

Criminal Procedure Code, s. 494—Irregular procedure—Discharge of prisoner committed to sessions—New trial—Conviction quashed.

A prisoner committed to Sessions on a charge cannot be discharged by the Sessions Court under s. 494 of the Code of Criminal Procedure, but must be convicted or acquitted.

Where a prisoner was erroneously discharged by a Sessions Court under s. 494 (a) :

Held, that as the prisoner was entitled to be acquitted, a conviction obtained in a second trial for the same offence was bad in law.

APPEAL from the decree of G. T. Mackenzie, Sessions Judge of Kistna, in calendar case No. 10 of 1888.

The prisoner was convicted of giving false evidence under s. 193 of the Penal Code.

In a suit before the District Munsif, prisoner was defendant, and sanction was granted to prosecute him for giving false evidence in the suit. Prisoner was committed for trial. The Sessions Judge, W. G. Underwood, being of opinion that the sanction granted by the District Munsif was too vague and did not apply to the prisoner, the Public Prosecutor withdrew from the prosecution, and the Sessions Judge directed the prisoner to be discharged. Thereupon a fresh sanction was obtained from the District Munsif, and the prisoner was again committed to Sessions and convicted. It was stated in the judgment that the Public Prosecutor withdrew from the case "before a charge was framed."

Anandachari for accused.

Mr. *Wedderburn* for the Crown.

(KERNAN, J., called attention to the fact of the former trial and order of discharge.)

Mr. *Wedderburn*.—The conviction is bad. The mistake has

* Criminal Appeal No. 183 of 1888.

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arisen apparently from the practice of Sessions Courts not trying prisoners on the charges framed by the committing magistrates, but on charges framed at the Sessions trial. The Sessions Judge evidently thought that the words "before a charge has been framed" in s. 494 of the Code of Criminal Procedure mean before the Sessions Court has framed a charge. But the charge referred to in s. 494 is evidently the charge mentioned in s. 210 and in s. 271 (see also s. 226). A prisoner once committed to Sessions on a charge cannot be discharged, but must be acquitted or convicted. The only way to remedy the defect now is to set aside all proceedings, including the erroneous order of discharge, and direct a new trial from that point.

The Court (Kernan and Wilkinson, JJ.) delivered the following

JUDGMENT.—The prisoner was charged for the same offence that he is now charged with in case No. 19 of 1887 before the Sessions Judge on the 22nd day of July 1887. The charge was withdrawn by the Public Prosecutor by permission of the Sessions Judge. The result was that under s. 494(b) the prisoner should have been acquitted. But he was merely discharged by the Sessions Judge. This procedure was wrong. The Sessions Judge should have referred the matter to the High Court to quash the committal as he thought the sanction insufficient.

As the prisoner was entitled to be acquitted on the charge, the second charge for the same offence, though on a new sanction, is bad. We must, therefore, reverse the conviction in the present case.

APPELLATE CRIMINAL.

Before Mr. Justice Kernan and Mr. Justice Muttusami Ayyar.

QUEEN-EMPRESS

against

NIRICHAN AND ANOTHER.*

Criminal Procedure Code, s. 35—Penal Code, ss. 71, 72—Separate convictions for different offences in the same transaction.

An accused person was convicted under s. 457 of the Penal Code of house-breaking by night in order to commit an offence (mischief and assault), and also

* Criminal Revision Cases Nos. 87 and 88 of 1888.